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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

MAY 30 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
CITY OF BOSTON)
)
and)
)
SPRINT NEXTEL CORPORATION)
)
Relating to Rebanding Issues in the 800 MHz Band)

PS Docket No. 07-69

Mediation No. TAM-11155

RECEIVED - FCC

MAY 30 2007

Federal Communications Commission
Bureau / Office

To: Chief Administrative Law Judge

REPLY TO OPPOSITION TO
MOTION TO DELETE /COMBINE ISSUES

The City of Boston, by and through counsel, hereby replies to the Opposition filed by Sprint Nextel Corporation ("Nextel") to the City's Motion to consolidate issues 8(a) and 8(b) as identified under the Hearing Designation Order¹ issued within this matter. Nextel's Opposition illustrates the appropriateness of consolidation of the issues as the Opposition does not appear to reflect the present status of the issue(s), nor does the Opposition reflect the City's intended use of the subject MCM Technology, Inc. ("MCM") software.

The Issue Involves a Single Proposed Purchase, of a Single Software License, From a Single Vendor, to be Employed by a Single Incumbent

Pursuant to negotiations between the parties and continued negotiations with the vendor, MCM, the amount proposed for the purchase of a software license by the City from MCM changed

¹ *City of Boston and Sprint Nextel Corporation*, Hearing Designation Order, PS Docket No. 07-69, DA 07-1631 (released April 5, 2007).

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over time. Those changes reflect a number of factors, however, the most significant factor was that MCM and the City determined that the City's minimum reasonable and prudent requirements did not include the need to install the MCM software upon the City's own servers. Thus, MCM offered² to the City a subscription service, which dramatically reduced the overall cost of the software license.

The net result of the City's negotiations and discussions is reflected on the attached "Rebanding Quote" from MCM to the City. That quote, which was provided to the City on January 12, 2007, includes the total cost of a one-year subscription for use of the software to assist the City in fulfilling its rebanding efforts. The MCM quote is to the City, not a department within the City. It provides for use in rebanding up to 3,000 mobile and portable units, the estimated sum of the mobiles and portables represented by the two, subject Frequency Reconfiguration Agreements (FRA). It provides for up to 13 users, an amount sufficient to serve all projected combined uses of the software to reband all departments represented under the two FRAs. Accordingly, at this time there exists a single MCM quote for a single software license sufficient to assist the City, the single incumbent, in performing its duties under the Commission's Orders.

The single quote was identified to Nextel's representative following the release of the Bureau's Order. The revised quote represented a significant decrease in the amount proposed by the City. The City's offer of the revised quote was in furtherance of its obligation to continue to negotiate in good faith with Nextel to arrive at a settlement of issues in dispute, regardless of

² MCM's recent offer was not made prior to the issuance of the Bureau's Order under *City of Boston, Massachusetts and Sprint Nextel*, Memorandum Opinion and Order, 21 FCC Rcd 14661 (released December 20, 2006) ("Bureau's Order"), thus, the attached MCM quote was not part of the underlying record. Additionally, that portion of the Bureau's Order cited within the Opposition at pages 4-5 was superceded and made moot by the attached MCM quote, thus, whatever basis the Bureau employed to create separate issues 8(a) and 8(b) no longer exists due to the passage of time and the City's continuing efforts.

whether the quote existed at the time the parties filed their respective Statements of Position before the Bureau. However, Nextel rejected the City's offer.

The instant proceeding is a *de novo* review of the issue in dispute. The parties are not bound by the record reviewed by the Bureau. The entire process underlying this matter is an evolving negotiation of terms and conditions, cost estimates, etc. Arising out of those efforts, the parties are down to a single issue in dispute, therefore, consolidation is entirely appropriate.

The Existence of Two FRAs is not Relevant

For reasons unrelated to the issue in dispute, the City's relevant radio systems were divided into two separate negotiated agreements.³ The material points of commonality between the agreements are (1) both agreements are between Nextel and the City of Boston and (2) the issue in dispute within both was the City's proposed use of the MCM software. Although the use of two agreements, rather than one universal agreement, served unrelated objectives of the parties, the software issue was viewed by the City to be a single issue. Said directly, the City wanted to use it and Nextel did not wish to pay for it. That the parties wound up repeatedly dealing with the same issue pursuant to two mediations does not change the nature of the issue as it exists today. It remains a single issue.

The Bureau's Order similarly reflects its treatment of the MCM software as, in all practical senses, a single issue. Although the Bureau noted the fact that the City proposed to use the software

³ In fact, the system referred to by Nextel at page 3 of its Opposition as the Boston Trunking and Transportation System, reflects an earlier consolidation of the parties' negotiation of what was treated, at one time, as two systems. Thus, the parties previously worked together to consolidate issues and FRAs when it was mutually beneficial, like now.

for its needs in rebanding both the City's police radios and its other department radios, it was *understood by the parties that the proposed use of the software would extend to all rebanding efforts* required of the City, including those that are not reflected by either FRA, such as the City's future rebanding efforts in association with a change of frequencies by the State of Massachusetts which channels are also programmed into the City's radios.

Accordingly, although the underlying record may reflect often duplicative arguments from each party regarding the City's proposed use, at present the only relevant issue in dispute is that shown on the attached MCM quote. The City knows of no logical way to divide that quote between the two FRAs. The City does not know of any reasonable means of assigning a percentage of the proposed cost among the two FRAs and the City's intended subsequent use of the software to manage and record its future rebanding of radios in association with the State's efforts. In its Opposition Nextel does not suggest any such methodology, therefore, the ALJ may assume that no rational method exists for giving such treatment to the estimated costs. Certainly, the City knows of no way to divide the baby.

Spirit of Cooperation

In what reads as nearly a gratuitous aside at page 5 of the Opposition, Nextel questioned whether the City's Motion was consistent with the spirit of cooperative discovery. Nextel's reasoning stems from its stated belief that the City did not discuss its Motion with Nextel prior to filing. In fact, the City informed Nextel's representatives months ago that it would file its Motion to reduce the matters to a single issue and, within those conversations, asked whether Nextel would oppose such a Motion. No response was provided by Nextel. Since no written record was made of

this effort, it is possible that the conversation was either forgotten or not adequately communicated to opposing counsel.

Nonetheless, the City avers that its filing of the Motion is entirely consistent with the ALJ's encouragement. Properly combining the issues into a single issue will save time and cost for the parties. It will reduce and focus discovery and lead to the greater likelihood of stipulations. It will streamline the proceeding and cause everyone to focus on the only relevant issue in dispute. Accordingly, grant of the request will result in a shared benefit for all by avoiding an overly complicated presentation of facts which must then be considered in view of one FRA versus another.

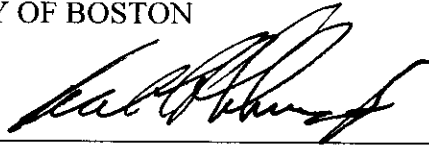
At the outset, the parties have the opportunity to facilitate the economy of justice and avoid unnecessary complicating factors by accepting the fact that, despite the manner by which this issue has come before the ALJ, there exists but one issue.

The City would have preferred for the parties to have agreed on the benefits of consolidation and, in candor, the City is having difficulty understanding Nextel's resistance. However, the City continues to believe strongly that consolidation of the issues is the only logical, cooperative avenue toward a resolution of what is, in truth, a single issue in dispute.

Conclusion

For the foregoing reasons and for good cause shown, the City of Boston respectfully requests
grant of its Motion to consolidate issues 8(a) and 8(b).

Respectfully submitted,
CITY OF BOSTON

By 
Robert H. Schwaninger, Jr.

Dated: May 30, 2007

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CERTIFICATE OF SERVICE

I, Ann Hamilton Jones, hereby certify that on this 30th day of May, 2007, I sent via first class, postage paid, United States Mail, a copy of the foregoing Reply To Opposition To Motion To Delete/Combine Issues to the following persons:

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003013

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Re-banding Quote

Proposed to:	City of Boston	Date:	January 12, 2007
	Attn: Ann Roper-Quinn	Sales Rep:	
	1 City Hall Plaza - Room 702	Engineer:	Jensen/Campbell
	Boston, MA 02108	Expiration:	January 31, 2007
	617-635-4767		
	ann.quinn@cityofboston.gov		

Project Variables

Quantity of 800 MHz Radios	< 3,000
Quantity of Users	13

Project Costs

Implementation & 12-Month Hosted Subscription Fee	\$	60,564.00
Travel Expenses	\$	5,000.00
Total Cost	\$	65,564.00

Project Extension Fees

Monthly Subscription Fee per User per Month upon expiration of 12-Month Subscription Period	\$	395.00
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Deliverables

SW-REB-V5-SUB-PMP

Rebanding 360° Project Management Platform Includes:

License Structure

- * 12-Month Hosted Subscription Period

Software

- * Account and Contact Management
- * 800 MHz Equipment Management
- * Work Tracking
- * Labor and Parts Inventory Management
- * Re-banding Project Management & Audit Reporting

Professional Services

- * Data Conversion
- * Database Configuration
- * Installation Services
- * Project Management
- * User Training
- * Help-Desk Support

MCM Rebanding 360 Project Management Platform

Solution Attributes & Specifications:

- The MCM Rebanding 360 PMP includes a selected list of modules from MCM's CommShop 360 Management Solution targeted specifically for the functionality needed for managing re-banding projects. The Re-banding functionality includes the following modules:
 - Account and Contact Management
 - 800 MHz Equipment Management
 - Work Tracking
 - Labor and Parts Inventory Management
 - Re-banding Project Management & Audit Reporting
- Re-banding specific canned reports are a part of the platform, including...
 - Agency Listing
 - Asset Listings by Agency, Class/Category and Unit ID
 - Work Order History by Agency, Item/Service, and Technician
 - Project Status Report
- Only 800MHz asset data and involved agency data will be converted.
- All data must be provided to MCM in one excel workbook.
- A "10% margin of error" setting will limit the addition of new assets (e.g. an incumbent initially reports 3,000 800MHz; Database will be limited to the entry of 3,300 total assets).
- A setting will also limit the number of work orders relative to the number of 800 MHz assets.
- Parts inventory will not be included in data conversion.
- Only services and general cost-tracking items will be created during the system configuration process.
- The Rebanding 360 PMP is an out of the box software solution, not to be customized.
- MCM will provide training in the following areas:
 - Adding and updating asset & agency information
 - Add services to the inventory module
 - Recording of work orders on re-banding assets, including labor tracking
 - Recording of other indirect time & costs
 - Managing the project through the Project Module
- Training shall be provided remotely (via web instruction), with the exception of larger and more complex projects (on a "TBD" basis).
- MCM will provide phone support during normal business hours for the duration of contracted period.
- The Solution will be hosted at a third-party location, with incumbent access via an internet link.
- Upon conclusion of the incumbent's rebanding project, there will be no residual value (e.g. the use of the application will cease, thus the data will not be accessible).

Terms Summary:

- The incumbent will enter into a Subscription Agreement which calls for a nominal up-front implementation fee and a monthly subscription fee, allowing access to the application.
- The Subscription Agreement will be for a minimum of 12 months.
- Upon the 12-month expiration, the incumbent will be offered a month-to-month subscription option.
- During the month-to-month subscription period, the incumbent will have the right to terminate the subscription at any time with a 30-day notice.
- Payment will be quarterly, in advance of the service.